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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,946	10/14/2004	John O. Yeiser	PA03 (112015-0009)	5945
27189	7590	02/27/2006	EXAMINER	
PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101				MCGRAW, TREVOR EDWIN
ART UNIT		PAPER NUMBER		
		3752		

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,946	YEISER, JOHN O.	
	<b>Examiner</b> Trevor McGraw	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 February 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 02/28/2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/28/2005</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1 recites the limitation "bathing position" in line 10. There is insufficient antecedent basis for this limitation in the claim. Examiner suggest making proper reference to the limitation "bathing position" to provide for sufficient antecedence in the claim.
2. Claim 11, 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 10 line 19, it is unclear to the Examiner as to what the functional limitation "fastening means" encompasses.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over D'Ugo (US Patent Publication 2002/0083518) in view of Gellmann (US Patent 3,375,532).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by D'Ugo (US Patent Publication 2002/0083518). In regard to claims 1-6, D'Ugo teaches an improved shower apparatus that can be installed to a pipe (10) in a preexisting shower that consists of a 3-way connector (16) with an inlet (17) and outlets (22,24) where outlet (24) is connected to a showerhead and outlet (22) is connected to a spray bar or substantially cylindrical member (38) having a plurality of holes (40) which allow angular water spray to be directed toward a person bathing in the shower. The cylindrical member (38) is secured to the wall (46) by means of a bracket (44), clip (42), and suction cup (48) arrangement that encompasses the outer diameter of the cylindrical member (38). The 3 way connector (16) further comprises two valves for controlling flow from the source pipe (10) to the inlet of the 3 way connector (17) and the outlets (22,24) so that water can be controllably directed from the outlet (24) to the showerhead (12) and outlet (22) and the cylindrical member (38).

5. Claims 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Ugo (US Patent Publication 2002/0083518). D'Ugo as discussed above teaches a shower system that can be retrofitted into a shower using an existing plumbing where the showerhead can be removed and attached to a 3 way connector (16) having one

inlet (17) and two outlets (22,24). One outlet (24) connected to the shower head (12) and one outlet (22) connected to a cylindrical member (38) with a plurality of holes (40). D'Ugo also discloses a height adjustment retainer housing (34) with a tension knob (36) that is fixable connected with a hose (32) that is in fluid communication with the cylindrical member (38). The height adjustment retainer housing (34), and tension knob (36) function to adjust the height and position of the cylindrical member (38) determinate to the shower users preference. However, D'Ugo fails to teach a swivel joint as that of the present invention for varying the height and position in accordance with user preference. It would have been obvious to one of ordinary skill in the art at the time of the present invention to provide swivel joints at various positions in the shower spray bar arrangement affixed to connector pipes in lieu of the D'Ugo hose (32) to allow for a wider range of height and positioning. It is further obvious to one of ordinary skill in the art at the time of the invention to change and allow for other manners of attaching a securing means to the wall of a shower providing for an adhesive substance or a bolting device in lieu of a suction cup as provided for by D'Ugo to further simplify the shower spray bar retrofitting progression.

***Specification***

6. The disclosure is objected to because of the following informalities: In line 6, on page 11 of the Specification, the word "to" should be added after the word "adjacent". The corrected line 6 should read "adjacent to the" in lieu of "adjacent the".

Appropriate correction is required.

***Drawings***

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "68" has been used to designate both "smaller nozzles" and "flexible seal". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance. Figure 2 is further objected to as not being in compliance with 37 CFR 1.81. Bracketing is required in the lower left corner to designate Figure 2 similar to Figure 3, 4 and 5.

***Conclusion***

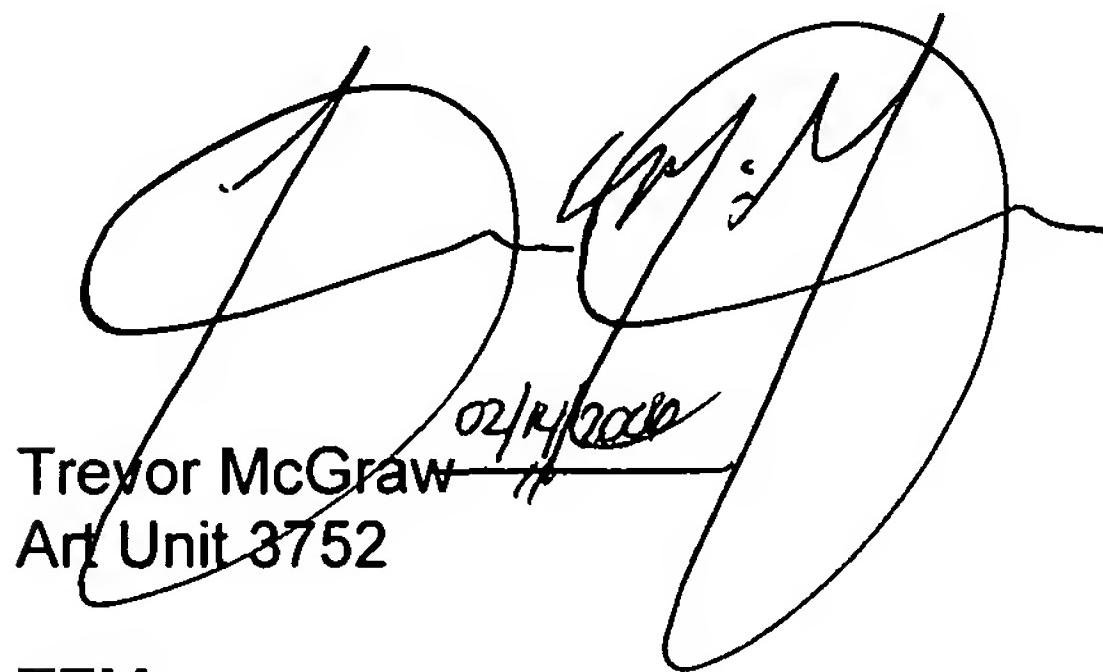
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. D'Ugo (6,567,998), Gellmann (3,375,532), Klose (D341,191), Klose (D340,376), Bowden (4,809,369), Casperson et al. (5,742,961), Perry et al. (6,378,791).

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trevor McGraw whose telephone number is (571) 272-7375. The examiner can normally be reached on Monday-Friday (2nd & 4th Friday Off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Trevor McGraw  
Art Unit 3752  
02/4/2008

TEM



David A. Scherbel  
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